



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

June 9, 2011

VIA U.S. MAIL DELIVERY CONFIRMATION
#0308 0660 0000 0936 2944

Jeffrey Hooper, Manager
ECC Properties, LLC
PO Box 565611
Miami, FL 33256

Re: ECC Properties' Failure to Conduct Site Rehabilitation

Dear Mr. Hooper:

I am an enforcement attorney for the Department of Environmental Protection. This matter was referred to me by the Department's Southeast District as a result of ECC Properties' failure to complete and submit a Site Assessment Report (SAR) that satisfies the criteria enumerated in Rule 62-780.600(8) of the Florida Administrative Code. This SAR is far overdue. As such, it is my intent to take immediate legal action seeking injunctive relief and penalties, unless you agree to the attached consent order.

The attached consent order waives the Department's right to take legal action against you for the hazardous substances discharged at the former Pure Lead Products facility in exchange for your promise to (1) submit a SAR in 90 days and (2) continue to rehabilitate the site in accordance with the Department's contaminated site cleanup criteria (i.e., Chapter 62-780 of the Florida Administrative Code). Please note that, in an effort to encourage you to devote your resources to the remediation of the site, the Department has chosen not to include provisions in the consent order that require you (a) to pay a penalty to account for the delay that has already occurred or (b) to reimburse the Department of its costs and expenses that were incurred as a result of the delay.

If you wish to accept this offer and bring closure to this matter, please take the following actions:

- Review and fully understand the terms of the enclosed Consent Order.
- Sign and return the Consent Order to Mr. Paul Wierzbicki, Waste Cleanup Supervisor, State of Florida Department of Environmental Protection, Southeast District Office 400 North Congress Avenue, Suite 200, West Palm Beach, Florida 33401-2319, no later than July 11, 2011.

Mr. Jeffrey Hooper
Re: ECC Properties' Failure to Conduct Site Rehabilitation
Page 2 of 2
June 9, 2011

Do not hesitate to contact Mr. Hubert Philoctete at (561) 681-6726 if you have *any* questions concerning this letter or the settlement offer. Please be advised that if we do not hear from you by July 11th this offer will be terminated and legal action will be taken.

Sincerely,



Chadwick R. Stevens
Senior Assistant General Counsel

Attachment: Consent Order

cc: Mr. Paul Wierzbicki, P.G., FDEP SED Office Paul.Wierzbicki@dep.state.fl.us
Mr. Hubert Philoctete, FDEP SED Office Hubert.Phiolctete@dep.state.fl.us
Mr. Wilbur Mayorga, P.E., Miami-Dade DERM MayorW@miamidade.gov

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

IN THE OFFICE OF THE
SOUTHEAST DISTRICT

vs.

OGC FILE NO. 11-0796

ECC PROPERTIES, LLC

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and ECC Properties, LLC, ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent admits the following:

1. The Department is the administrative agency of the State of Florida with the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapters 403 and 376, Florida Statutes ("F.S."), and the rules promulgated and authorized in Title 62, Florida Administrative Code ("F.A.C."). The Department has jurisdiction over the matters addressed in this Order.

2. Respondent is an active Florida limited liability company that owns a parcel of real property located at 3450 NW N River Drive, Miami, Miami-Dade County, Florida; Property Appraiser Parcel Id No. 30-3128-014-2510; Lot 17, Block 76 of Melrose Heights Fifth Section ("Property"). Respondent is a "person" within the meaning of Sections 376.301(28) and 403.703(22), F.S.

3. *Lead* and *antimony*, which are "hazardous substances," as defined by Sections 403.703(12) and 376.301(21), F.S., were "discharged" to, as defined Section 376.301(13), F.S., and remain present in the Property's soils and groundwater.

4. The areas at which hazardous substances are present at the Property, and beyond the Property to the extent the discharges have migrated, constitute a "facility" as referenced in Section 403.727(4)(a), F.S.

5. By virtue of being the current owner of the Property, Respondent is strictly liable to the Department for the hazardous substance discharges specified above, pursuant to Section 376.308(1)(b), F.S., and is therefore a "person responsible for site rehabilitation" ("PRSR") within the meaning of Section 376.301(31), F.S., and Rule 62-780.200(32), F.A.C.

6. Pursuant to Rule 62-780.150(1), F.A.C., as a PRSR, Respondent is required to comply with the provisions of Chapter 62-780, F.A.C., and is subject to enforcement to compel compliance with the provisions of Chapter 62-780, F.A.C.

7. Respondent has been aware of the hazardous substance discharges specified above for more than 270 days and has not submitted a Site Assessment Report to the Department as required by Rule 62-780.600(7), F.A.C.

8. Respondents failure to submit a Site Assessment Report constitutes a violation of Section 376.302(b), F.S. and Section 403.161(1)(b), F.S.

Having reached a resolution of the matter, Respondent and the Department mutually agree and it is

ORDERED:

9. To address the discharges of hazardous substances referenced above, Respondent shall conduct "site rehabilitation" as defined in Section 376.301(43), F.S., and Rule 62-780.200(44), F.A.C., in accordance with the requirements of Chapter 62-780, F.A.C. Respondent shall have 90 days from the effective date of this Order to submit a

Site Assessment Report in accordance with Rule 62-780.600, F.A.C. Thereafter, the timeframes set forth in Chapter 62-780, F.A.C. shall apply.

10. Pursuant to Sections 120.569 and 120.57, F.S., Respondent is entitled to file a petition for an administrative hearing challenging any agency action taken by the Department concerning any of Respondent's submittals required by Rule 62-780, F.A.C. The petition must be in the form required by Rule 62-110.106, F.A.C. and either Rule 28-106.201, F.A.C. (for petitions disputing material facts) or Rule 28-106.301, F.A.C. (for petitions not disputing material facts). The petition must be filed (i.e., received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of the Department's agency action. The failure to file a petition within this time period waives Respondent's right to request an administrative hearing on the agency action.

11. Respondent shall use all reasonable efforts to obtain any necessary access for work to be performed in the implementation of this Order. If necessary access cannot be obtained, or if obtained, is revoked by owners or entities controlling access to the properties to which access is necessary, Respondent shall notify the Department within five business days of such refusal or revocation. The Department may then at any time seek to obtain access as is necessary to implement the terms of this Order. Respondent shall reimburse the Department for any damages, costs, or expenses, including expert and attorneys fees, that the Department is ordered to pay, or that the Department incurs in connection with its efforts to obtain access as is necessary to implement the terms of this Order. Respondent shall pay these sums to the Department or arrange a payment schedule with the Department within 30 days of written demand by the Department.

12. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days, notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision(s) extended, the new compliance date(s), and the additional measures Respondent must take to avoid or minimize delay, if any. The failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

13. In the event of a sale or conveyance of the Property, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Property, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Property. The sale or conveyance of the Property does not relieve Respondent of the obligations imposed in this Order.

14. Respondent shall allow all authorized representatives of the Department access to the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

15. In the event Respondent fails to meet a deadline under Chapter 62-780, F.A.C., Respondent agrees to pay the Department stipulated penalties in the amount of \$500 each 24-hour period that the deadline remains unmet. The Department may demand stipulated penalties at any time after the failure to meet the deadline occurs. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment. The payment must be made to the "Ecosystem Management and Restoration Trust Fund" in accordance with the terms of the demand. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order.

16. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties

for the discharges described above. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

18. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, F.S.

19. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

20. This Consent Order is a final order of the Department pursuant to section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

21. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

22. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), F.S.

23. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation, and criminal penalties.

24. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations statutes or rules administered by the Department that are not specifically resolved by this Order, including but not limited to undisclosed releases, contamination or polluting conditions. Nothing herein shall be construed to limit the authority of the Department to undertake action against Respondent in response to or to recover the costs of responding to conditions at or from the Property or Facility that require Department action to abate an imminent hazard to the public health, welfare or the environment.

25. Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order. The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Consent Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;

- c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at Insert District Office and Address. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about

mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

26. Rules referenced in this Order are available at
<http://www.dep.state.fl.us/legal/Rules/rulelistnum.htm>.

FOR THE RESPONDENT:

Jeffery Hooper, Manager
ECC Properties, LLC

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FOR DEPARTMENT USE ONLY

DONE and ORDERED this _____ day of _____, 2011 in Palm
Beach County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Jill S. Creech, P.E.
Director, Southeast District

FILED, on this date, pursuant to Section 120.52,
F.S., with the designated Department Clerk,
receipt of which is hereby acknowledged.

Clerk

Date

Copies furnished to:
Lea Crandall, Agency Clerk
Mail Station 35